

NEWS



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State of New Jersey
Department of Labor
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Trenton, New Jersey
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Notice of Proposed New Rules

**Re: Proposed New Rule: N.J.A.C. 12:59
Industrial Home Work Minimum Wage Requirements**

Attached please find the above-referenced matters which were published in the December 2, 2002, 2002 *New Jersey Register*.

If you have any questions, please contact Frederick S. Cohen, Regulatory Officer 1 at (609) 777-2960.

The agency proposal follows:

Summary

N.J.A.C. 12:59, which pertains to the control of the methods of production by industrial home work, expired on September 2, 2002. After a review thereof, the Department of Labor has determined that the aforesaid rules should be proposed anew. Pursuant to N.J.A.C. 1:30-6.4(h), the expired rules are proposed herein as new rules. The rules were promulgated, to the degree possible, to address the concerns of the Legislature, as set forth in N.J.S.A. 34:6-120.1 et seq. and, in particular, N.J.S.A. 34:6-136.1 et seq., that workers, many of whom are immigrants, including women and children, some of whom cannot speak English, not be placed in the disadvantageous position of exploited workers. To that end, these rules are designed to reassert parameters by which this vulnerable class of workers may be employed and the concomitant duties which appertain to the employers of those individuals. Thus, the proposed rules are as follows:

N.J.A.C. 12:59-1.1 sets forth the purpose of the rules and the authority by which the rules are enacted.

N.J.A.C. 12:59-1.2 establishes that all New Jersey distributors of industrial home work must comply with the laws, rules and regulations which govern the employment of women and minors in the home and factory.

N.J.A.C. 12:59-1.3 provides that the distribution of industrial home work to a home worker can only occur from a factory or business located in this State.

N.J.A.C. 12:59-1.4 limits the number of home workers employed by one employer to one-third of his or her employees.

N.J.A.C. 12:59-1.5 requires that an employer be in possession of a valid employer's permit before industrial home work can be distributed to workers and that the permit be kept on file on the premises from which the work is distributed.

N.J.A.C. 12:59-1.6 sets forth the methodology through which application forms for an employer's permit and home worker certificates can be obtained and filed.

N.J.A.C. 12:59-1.7 mandates that all employers of home workers must provide workers' compensation insurance coverage for their home workers.

N.J.A.C. 12:59-1.8 delineates the prerequisites which an employer must meet in order to utilize workers between the ages of 16 and 18 years old, while strictly forbidding the employment of any minor under 16 years old to manufacture industrial home work, either at home or in a factory. This rule also sets forth the hours during which minors may work, the break time which must be allotted thereto, the recordkeeping requirements to which an employer must adhere with regard to employees who are minors and the mandate that employers must comply with all provisions of the State's child labor laws.

N.J.A.C. 12:59-1.9 lists the recordkeeping requirements that must be followed by an industrial home work employer with regard to his or her employees and business operations.

N.J.A.C. 12:59-1.10 provides that an industrial home worker must provide his or her employer with a written statement setting forth the hours worked each day on such articles or materials supplied by the employer to the worker.

N.J.A.C. 12:59-1.11 mandates that a female employee is not permitted to work more than 10 hours per day or 54 hours per week.

N.J.A.C. 12:59-1.12 notes the applicability of the State's Minimum Wage Law to industrial home workers and the recordkeeping requirements to which an employer must adhere under that law. It also requires an employer to post specified mandatory wage orders in all rooms where industrial home workers are employed.

N.J.A.C. 12:59-1.13 provides that compliance with the State Minimum Wage Law does not excuse an employer from failing to comply with the Federal Fair Labor Standards Act.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules will have a positive social impact by advancing a framework within which industrial home workers will be afforded the protections enjoyed by the State's other workers. Specifically, those workers will be assured at least a minimum wage and the benefit of workers' compensation coverage in the event of an on-the-job injury. In addition, the rules continue to impose upon employers of industrial home workers the obligation to obtain permits to utilize the services of the industrial home workers and to keep and maintain appropriate records pertaining to those workers. Furthermore, the proposed rules continue to set parameters for the use of both minors and women in industrial home work. By attempting to

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DIVISION OF WAGE AND HOUR COMPLIANCE Industrial Home Work Minimum Wage Requirements Proposed New Rules: N.J.A.C. 12:59

Authorized By: Albert G. Kroll, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:6-120 et seq. and 34:6-136.1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2002-429.

A public hearing will be held on the proposed new rule on the following date and at the following location:

Friday, December 27, 2002
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by January 31, 2003 to:

Frederick S. Cohen, Regulatory Officer
Office of Regulatory Services
Department of Labor
PO Box 110
Trenton, New Jersey 08625-0110

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provide the workers with a minimal standard of living and by assuring that specific work hours and break times are allotted thereto, these rules provide protections to an otherwise vulnerable class of workers.

Economic Impact

These new rules will continue to have a positive economic impact since they ensure that industrial home workers receive not less than the minimum wage for services which they perform. In turn, that will translate into the ability to provide an adequate standard of living to themselves and to family members. Furthermore, if an industrial home worker should be injured while at work, that worker would be able to obtain workers' compensation benefits since these rules mandate that the industrial home work employer maintain appropriate insurance coverage for his or her employees. Thus, the injured worker would be able to maintain him or herself through what would otherwise be a hard economic time by the assurance of monetary recompense for the injury sustained. The employer will continue to absorb the expenses associated with maintaining a workers' compensation insurance policy and those that flow from the maintenance and reporting of accurate wage payment records, as well as from the mandatory posting of wage orders issued by the Department. These costs are necessary to further the protection of workers who have historically been misused and to assure them a minimal standard of living.

Federal Standards Statement

The proposed new rules do not exceed standards or requirements imposed by Federal law. Indeed, the rules are consistent with the requirements of the Federal Fair Labor Standards Act, 29 U.S.C. §§201 et seq.

Jobs Impact

The Department does not anticipate any job creation or job losses as a result of the proposed new rules.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules continue to impose reporting, recordkeeping and compliance requirements on both small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and businesses of larger size. Those requirements are the same as those imposed by law upon all employers in the State of New Jersey. Additionally, those small businesses that engage in industrial home work are mandated to post specified mandatory wage orders in all rooms where industrial home workers perform their duties. They are also required to pay their workers at least the minimum statutory wage and to keep true and accurate records of hours worked and wage payments made to their workers. Costs of compliance are discussed in the Economic Impact above. No professional services are needed to comply with these rules. These obligations pertain to all New Jersey businesses, regardless of size. Since the Department is legally obligated to ensure that all workers in this State receive the proper wages for services performed, lesser requirements cannot be provided for small businesses.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the expired rules proposed herein as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 12:59.